



STATE OF CALIFORNIA

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May 14, 1991

Dear Mr. S. :

This is sent in response to your letters dated June 5, 1990, and January 29, 1991, to Mr. Richard H. Ochsner, Assistant Chief Counsel, in which you describe a series of transactions and request an opinion regarding the change in ownership consequences of the transactions.

In the following discussion, each transaction is separately analyzed. Unless otherwise expressly stated, each reference to a code section refers to the Revenue and Taxation Code.

Facts

C Enterprises, a California limited partnership ("C Enterprises"), was formed in late 1986 as a successor entity to C Enterprises, Inc., a California corporation (the "corporation".) The corporation was being liquidated at that time due to changes in the tax laws enacted as part of the Tax Reform Act of 1986. Pursuant to the liquidation, the real property owned by the corporation was transferred to C in a series of transactions exempt from property tax reappraisal pursuant to the provisions of Revenue and Taxation Code, §62(a)(2).

The percentage ownership interests in Copping upon its formation were as follows:

Partner

Hugh

Percentage  
Ownership  
Interest

24.49%

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Nell	24.49%
M. V Inc.	27.79%
All Other Partners	<u>23.23%</u>
	100.00%

Since the formation of C, there have been the following transfers of partnership interests:

1. In December of 1986, M. V, Inc., a corporation owned 50% by Hugh and 50% by Nell, was liquidated. M. V distributed its 27.79% interest in C to Hugh and Nell as equal tenants-in-common. After this transfer, the ownership interests in C were as follows:

<u>Partner</u>	<u>Percentage Ownership Interest</u>
Hugh	38.385%
Nell	38.385%
All Other Partners	<u>23.230%</u>
	100.000%

2. Subsequently, there were small transfers of partnership interests by other partners aggregating to 2.98% of the original outstanding partnership interests.

3. In early April, 1990, Hugh and Nell transferred their partnership interests in C to a revocable living trust known as the C Family Trust.

4. On April 13, 1990, Nell passed away. Pursuant to the terms of the C Family Trust, due to the death of Mrs. C, Hugh receives all of the trust income during his life and has the power to transfer the trust assets back to himself. The trust remains revocable.

5. In order to better utilize the trust assets, Hugh proposes to establish a new revocable trust and transfer all or a portion of the assets of the C Family Trust, including the C partnership interest, to the new revocable trust.

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Law and Analysis

1. Liquidation of M      V      , Inc.

The stated facts indicate that the transfer of the real property to the C      partnership was excluded from reappraisal by the provisions of section 62(a)(2). Therefore, the initial C      partners constituted the "original coowners" of the partnership within the meaning of section 64(d), which provides as follows:

If property is transferred on or after March 1, 1975, to a legal entity in a transaction excluded from change in ownership by paragraph (2) of subdivision (a) of Section 62, then the persons holding ownership interest in such legal entity immediately after the transfer shall be considered the "original coowners." Whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original coowners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property which was previously excluded from change in ownership under the provisions of paragraph (2) of subdivision (a) of Section 62 shall be reappraised.

The date of reappraisal shall be the date of the transfer of the ownership interest representing individually or cumulatively more than 50% of the interest in the entity.

A transfer of shares or other ownership interests which results in a change in control of a corporation, partnership, or any other legal entity is subject to reappraisal as provided in subdivision (c) rather than this subdivision.

Subsequent to the formation of C      one of the original coowner partners, M      V      , Inc., made a liquidating distribution of its 27.79% partnership interest to its two equal shareholders as equal tenants-in-common. You have expressed your opinion that this pro rata transfer should not be considered as a transfer by an original coowner for purposes of section 64(d) because there has been no change in the "ultimate control" of the transferred partnership interest. In

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other words, you contend that transfers which meet the criteria set forth in §62(a)(2) should not be considered to be transfers of original coowner interests under §64(d).

While you present a persuasive case, and there may be merit to your interpretation of §§62(a)(2) and 64(d), we are not aware of any compelling authority either in support of or opposition to your contention. We respectfully decline therefore, to express an opinion with respect to the issue of what constitutes a "transfer" in this context for purposes of §64(d). We will await further clarification of that issue by the Legislature or the courts.

## 2. Other Transfers of Partnership Interests

As you indicate, there is no exclusion applicable to the miscellaneous transfers of 2.98% of original coowner partnership interests. Therefore, these transfers will count towards the 50% turnover test set forth in section 64(d).

## 3. Transfers to C Family Trust

Section 60 defines "changes in ownership" as a "transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest."

Section 62(d) provides that transfers to revocable trusts and transfers to trusts where the transferor is the sole present beneficiary are excluded from the definition of change in ownership. Property Tax Rule 462(i)(2) is to the same effect.

The trustors of revocable trusts and the income beneficiaries of irrevocable trusts are generally considered to be the beneficial or equitable owners of their respective trust's property because they have the beneficial use of the property. (Allen v. Sutter County Board of Equalization (1983) 139 Cal. App. 3d 887, 890-892.) In California, the owner of the equitable or beneficial interest is generally regarded as the real owner. (Watson v. Sutro (1890) 86 Cal. 500.)

Based upon the above authorities, the trustors' transfer of the C partnership interest to their revocable trust did not result in a transfer of a present beneficial interest in the partnership. It is not, in substance, a

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transfer of an ownership interest as long as the trust remains revocable. We, therefore, agree with your conclusion that the transfer of partnership interest to the C Family Trust does not count towards the 50% turnover test in section 64(d).

4. Death of Nell

In your opinion, the interspousal exclusion in section 63 applies on the death of Nell so that the transfer of her beneficial interest in the C Family Trust to her husband does not count towards the 50% turnover test in §64(d).


As before, you present a persuasive case in support of your opinion, but there is, in fact, no authority as to whether or not §63 applies as you contend to exclude interspousal transfers from being considered to be transfers of original coowner interests under §64(d). Therefore, we also decline to express an opinion on this transfer.

5. Proposed Creation of and Transfer to New Revocable Trust

For the reasons stated above, the transfer of the C partnership interest from one revocable trust to another does not result in a transfer, in substance, of a present beneficial interest in the partnership. We, therefore, concur with your conclusion that this transfer shall also not be treated as a transfer of an original coowner interest under §64(d).

The views expressed in this letter are, of course, advisory only and not binding upon the assessor of any county. You may wish to consult the appropriate assessor in order to determine how the subject property or properties will be assessed.

Very truly yours,

  
Robert W. Lambert  
Staff Tax Counsel

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